IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.389 of 2003
with
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SPECIAL CIVIL APPLICATION No.391 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MATSUSHITA LAKHANPAL BATTERY INDIA LTD. (NOVINO)
Versus
VINOD LABHSHANKER PATEL C/O. MAHA GUJ.INDU.EMP. UNION

Appearance:
SCA Nos.389 of 2003 to 391 of 2003

MR S.I. NANAVATI, SENIOR ADVOCATE WITH MR.D.G. SHUKLA WITH MR.C.S.NAIDU for the petitioner.

MR RD RAVAL for the respondent in each of the petitions.

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 20/02/2003

COMMON ORAL JUDGEMENT

RULE. Mr.R.D. Rawal, the learned advocate appearing for the respondent in these petitions waives service of rule. With consent of the parties the matters are taken up for final disposal. The petitioner has challenged the order dated 30.10.2002 passed below exhibit 4 by the learned Member of the Industrial Tribunal, Vadodara (hereinafter referred to as "the Tribunal") in Complaints (IT) No.6 to 8 of 2001. The learned Member of the Tribunal was pleased to order that the petitioner establishment shall treat the respondent workmen to be in service and shall consider them to be under suspension and shall pay 50% of wages for the first 90 days and 75% of wages for the period thereafter. The hearing of the matter was ordered to take place on 13.12.2002.

2. Mr.Nanavati, the learned advocate appearing for the petitioner establishment submitted that the order in question could not have been passed by the learned Member of the Tribunal firstly because this is an order which is passed during pendency of Complaints (IT) No.6 to 8 of 2001 filed under section 33 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). Mr.Nanavati relied upon the provisions of section 33A of the Act which read as under:

"33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings. -- Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner, --

(a) xx xx

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and

shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly."

Mr.Nanavati submitted that wordings are ".. .. shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government .. .." He submitted that from the aforesaid wordings it is clear that the law does not contemplate for passing of interim orders. He further submitted that the learned Judge has committed an error in assuming that the reference bearing No.35 of 2001 which was referred to by the Notification of the Government dated 7.2.2001 was within the knowledge of the petitioner establishment. Therefore, the petitioner establishment has committed an error in passing order of termination dated 9.2.2001. He further submitted that the Notification dated 7.2.2001 was in the matter of industrial dispute. Said notification came to the notice of the petitioner establishment only when the petitioner establishment was served with the notice of the said reference on 12.2.2001. He also submitted that the learned Judge has recorded that the petitioner establishment came to know about pendency of reference by a newspaper report, but then the learned Judge is factually not right.

3. The question posed before this Court in the preset petition is as to whether under the provisions of section 33A of the Act the Court has jurisdiction to pass interim orders. Mr.Nanavati relied upon the judgement of the Honourable the Apex Court in the matter of Delhi Cloth and General Mills v. Additional Industrial Tribunal (Sri Rameshwar Dayal) and another, reported in 1960 (II) LLJ 712. He submitted that the Honourable the Apex Court was pleased to hold that,

".. Interim relief should not be the whole relief that the workmen would get if they succeeded finally. .."

He further submitted that the Honourable the Apex Court was pleased to observe in left hand column on page 715 wherein the Honourable the Apex Court while quoting its earlier judgement in the matter of Hotel Imperial, New Delhi and others v. Hotel Workers' Union, reported in 1959 II LLJ 544, as under:

".. .. we are of opinion that where the tribunal is dealing with an application under

S.33A of the Act and the question before it is whether an order of dismissal is against the provisions of S.33, it would be wrong in law for the tribunal to grant reinstatement or full wages in case the employer did not take the workman back in its service as an interim measure. It is clear that in case of a complaint under S.33A based on dismissal against the provisions of S.33, the final order which the tribunal can pass in case it is in favour of the workman, would be for reinstatement. That final order would be passed only if the employer fails to justify the dismissal before the tribunal, either by showing that proper domestic inquiry was held which established the misconduct or in case no domestic inquiry was held by producing evidence before the tribunal to justify the dismissal. .."

4. He also relied upon the observations of the Honourable the Apex Court in the matter of Punjab National Bank Ltd. v. Their workmen, reported in 1959 II LLJ 666 wherein it was held that;

"... in an inquiry under S.33A the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of S.33 by the employer. After such contravention is proved it would still be open to the employer to justify the impugned dismissal on the merits. That is a part of the dispute which the tribunal has to consider because the complaint made by the employee is treated as an industrial dispute and all the relevant aspects of the said dispute fall to be considered under S.33A. ..."

He submitted that therefore, the Honourable Tribunal has to consider sec.33A and it has to finally decide whether an employee should be reinstated or not. It is not open to order reinstatement as of interim relief, because otherwise it would amount to giving the workman the very relief which could be granted only if in a particular complaint the employer fails to justify the order of dismissal. The interim relief ordered in this case was to the effect that, 'the workman should be permitted to work'. In other words, he was ordered to be reinstated, in the alternative it was ordered that if the management does not take him back, then the management should pay him. In fact, no such order can be passed by way of interim relief, because it amounts to giving the respondent the relief right at the outset, to which he would be entitled to only if the employer fails to prove

his case under section 33A. As was pointed out in Hotel Imperial Case (supra) ordinarily interim relief should not be the whole relief what the workman would get if he succeeds finally.

5. Mr.Nanavati, the learned advocate also relied upon the observations made by this Court in paras 22 and 23 in the judgment of this Court in the matter of AMTS through Transport Manager v. Hisamudin Dosumiya Shaikh & others, reported in 1997 (2) GLH 365. Said paras are as under:

"Reliance is also placed in the said decision on the earlier decision of the Apex Court in Hotel Imperial's case, AIR 1959 SC 1342. The ratio propounded in the said decision is also squarely attracted to the facts and circumstances of the present case. In M/s Anup Engg. Ltd. v. Shreenarayan Kanaiyalal, 1995(1) GLH 345, the Apex Court has propounded the material principles in relation to the grant of interim relief or order in case of proceedings under section 33A of the ID Act. In the said case, it is observed that during the pendency of the proceedings under section 33A of the ID Act, order directing payment of wages to the workman cannot be passed on an interim application. Interim relief cannot be granted by deciding the main issue at interlocutory stage when the main issue is required to be decided finally in the pending proceeding. In the present case, in complaint under section 33A, the main grievance which was voiced was that the preparation of the new duty list making a departure from the past settled practice in pursuance of circular no.62 issued by the petitioner-AMTS is bad in law being violation of the provisions of sec.9A and sec.33 and the settled practice and usage. The Industrial Tribunal, while exercising its discretionary power in grant of ad interim order, granted the relief which is the main relief in the complaint under sec.33A. Therefore, the principles evolved and explained in the aforesaid decision of the Supreme Court in the case of M/s Anup Engineering (surpa) are directly applicable to the facts and circumstances of the present case. (emphasis supplied)

23. It is true that the jurisdictional scope and sweep and parameters under the writ jurisdiction against the interlocutory order are

very much circumscribed. This Court is in agreement with the learned advocates Mr.Rathod and Mr.Gandhi that ordinarily this Court should not interfere with the interlocutory order recorded in purported exercise of discretionary power by the Court below. There cannot be any quarrel about the principles propounded and relied on by both the advocates of the respondents. Nonetheless, the principles enunciated in the aforesaid two decisions of the Apex Court and two other decisions of this Court pertaining to the powers of the Court for grant of interlocutory orders or injunction are also required to be borne in mind while exercising the discretionary powers of grant of interlocutory injunction. Since the main controversy is pending in the complaint under section 33A of the ID Act and the interlocutory order after hearing the other side is required to be recorded and for which the date fixed as stated at the Bar is 23rd December 1996, this Court does not deem it expedient and desirable to divulge all other disputed factual aspects. It would not, therefore, be appropriate to deal with and decide other contentions relating to the factual aspects. However, suffice it to say that the impugned order recorded by the Industrial Tribunal at the interlocutory stage, ex parte, prima facie, radiates and imprint of non application of mind not only to the vital facts, but also to the vital principles of law governing the grant of interlocutory injunction. As observed hereinabove, no any reason whatsoever is stated which prompted the Industrial Tribunal to record the impugned order and exercise the discretionary power in favour of the respondents-complainants. Since no reasons are assigned, it could be said that it is not a speaking order and there appears to be non application of mind to the vital aspects. These two factors are efficient and sufficient to allow the petition while quashing and setting aside the impugned interlocutory ex pare order restraining the petitioner from implementing and operating the new duty list pursuant to the settlement and more so in view of clause 17 of he settlement which has been confirmed by the Industrial Tribunal in a reference and by a Division Bench of this Court." (emphasis supplied)

6. On the other hand Mr.Raval, the learned advocate

appearing for the respondent, workman strenuously contended that firstly the order being interlocutory it does not warrant any interference at the hands of this Court. Secondly what is granted by the learned Judge by the impugned order is lesser than what was prayed for. Mr.Raval relied upon the following judgements in support of his arguments :

(i) Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma and others, reported in 2002 I LLJ 834.

(ii) Fakirbhai Fulabhai Solanki v. Presiding Officer and another, reported in 1986 LAB I.C. 879.

(iii) R. Balasubramanian and ors. v. Carborundum Universal Ltd., reported in 1977 LAB I.C. 826.

(iv) AMTS, through Transport Manager v. Hisamudin Dosumiya Shaikh & ors, reported in 1997(2) GLH 365.

(v) Order dated 25.2.2002 passed in Special Civil Application No.2510 of 2001 by this Court (Coram: H.K. Rathod, J.).

(vi) Krishna Keshav Laboratories Ltd. v. Ashwinbhai
And

(vii) Order dated 9.3.1999 passed in Special Civil Application No.10550 of 1998 by this Court (Coram: R. Balia, J.).

Mr.Raval, the learned advocate specifically read para 17 of the judgement reported in 1997 (2) GLH 365 (supra), which is as under:

"There is no dispute about the fact that there is no specific statutory provision for passing ad interim or interlocutory orders insofar as the Labour Court or Industrial Tribunal authorities are concerned unlike the provisions of Order 39, Rules 1, 2 and 3 of the Code of Civil Procedure, 1908 (Code). It is also not in dispute that the Labour Court or the Industrial Tribunal, as the case may be, is competent to pass appropriate interlocutory injunctions or orders. Therefore, the only question which requires to be examined and adjudicated upon at this juncture in this petition is whether the impugned ex parte interim order recorded by the Industrial Tribunal,

restraining the petitioner-AMTS from operating the new duty lists pursuant to Circular No.62 is justified, legal and valid or not."

7. Mr.Raval, the learned advocate submitted that the Honourable Court was pleased to set aside the order passed by the Tribunal in the said judgement, but that was on the ground that the Tribunal had exceeded jurisdiction it had and not on the ground that the Tribunal did not have jurisdiction. Be that as it may. The question remains that in view of the two judgements relied upon by Mr.Nanavati whether the present order can be allowed to stand. When the matters being Complaints (IT) No.6 to 8 of 2001 were fixed for hearing on 13.12.2002 and while passing order dated 30.10.2002 whether there was any justification to pass order of subsistence allowance treating the employees to be in service. This virtually amounts to granting of reinstatement in favour of these workmen. In fact, the matters should have been set down final for adjudication by putting the parties to terms and if there was any non cooperation then passing of interim orders could have been justified. In view of the fact that Complaints No.6 to 8 of 2001 were fixed for hearing on 13.12.2002 it is directed that the Industrial Tribunal shall give priority and the complaints be decided within six months from the date of receipt of this order. In view of that the petitions are allowed and the impugned orders are hereby quashed and set aside. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)

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